

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

ROGER KINCAID, )  
                        )  
                        )  
Petitioner,         )  
                        )  
                        )  
-vs-                   )      Case No. CIV-14-736-F  
                        )  
                        )  
CARL BEAR, Warden, )  
                        )  
                        )  
Respondent.         )

**ORDER**

Petitioner, Roger Frank Kincaid, a state inmate proceeding *pro se*, seeks habeas relief under 28 U.S.C. § 2254 from his conviction and sentence. On September 14, 2016, United States Magistrate Judge Suzanne Mitchell issued a Report and Recommendation, recommending the denial of petitioner's § 2254 petition, the motions for supplementation and the motion for an evidentiary hearing.

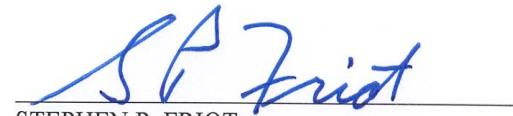
Presently before the court is petitioner's objection to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1), the court has conducted a *de novo* review of the matter. Having done so, the court concurs with the analysis of Magistrate Judge Mitchell. The court need not repeat that analysis here. The court finds petitioner's objection to be without merit. Therefore, the court accepts, adopts and affirms the Report and Recommendation in its entirety.

After the Report and Recommendation was issued, petitioner filed a motion to stay these proceedings pending his exhaustion of claims of newly discovered evidence in state court. A federal district court may exercise limited discretion to stay the proceedings in an action seeking habeas relief when a petitioner who presents a claim that has not yet been exhausted in state court shows: (1) good cause for his failure to

exhaust the claim before seeking relief in federal court; (2) the claim is not plainly meritless; and (3) he has not engaged in intentionally dilatory litigation tactics. *See, Rhines v. Weber*, 544 U.S. 269, 273-278 (2005). Here, the court concludes that petitioner, in his motion, has not satisfied any of the criteria for a stay. The court thus concludes that petitioner's motion should be denied.

Accordingly, the Report and Recommendation issued by United States Magistrate Judge Suzanne Mitchell on September 14, 2016 (doc. no. 29) is **ACCEPTED, ADOPTED** and **AFFIRMED**. Petitioner's petition under 28 U.S.C. § 2254 for writ of habeas corpus (doc. no. 1) is **DENIED**. Petitioner's motions for supplementation and motion for an evidentiary hearing (doc. nos. 4, 24, 25) are **DENIED**. Petitioner's motion to stay (doc. no. 31) is **DENIED**. Judgment shall issue forthwith.

DATED November 22, 2016.



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STEPHEN P. FRIOT  
UNITED STATES DISTRICT JUDGE

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